

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 | Brian Baker, a Washington resident,

Plaintiff,

10 | VS.

11 G&I VII Redmond Retail LLC, a Delaware
limited liability company,

Defendant.

NO.

**COMPLAINT FOR
DECLARATORY
AND INJUNCTIVE RELIEF**

14 COMES NOW, Plaintiff, Brian Baker, by and through his attorneys, Conrad A.
15 Reynoldson and Michael Terasaki of Washington Civil & Disability Advocate, for his Complaint
16 for Declaratory and Injunctive Relief to state and allege as follows:

I. OVERVIEW

18 1. The Americans with Disabilities Act (the “ADA”) and the Washington Law
19 Against Discrimination (the “WLAD”) require places of public accommodation to be accessible
20 to people with disabilities.

21 2. The Redmond Saturday Market location, at or near 7730 Leary Way in Redmond,
22 Washington, is a place of public accommodation within the meaning of Title III of the ADA, 42
23 U.S.C. § 12181, and its implementing regulation, 28 C.F.R. § 36.104.

Complaint for Declaratory and Injunctive Relief **WASHINGTON CIVIL & DISABILITY ADVOCATE**
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3. Despite ADA requirements, routes into and within the Redmond Saturday Market
location are not wheelchair accessible.

3 4. Defendant G&I VII Redmond Retail LLC discriminates against individuals with
4 disabilities because it owns a property as a place of public accommodation that does not comply
5 with ADA laws and regulations.

6 5. Therefore, Plaintiff brings this action to end the civil rights violations at a place of
7 public accommodation by Defendant G&I VII Redmond Retail LLC against persons with
8 mobility disabilities.

II. PARTIES

6. Plaintiff Brian Baker is a Redmond, Washington resident who resides in this
district and travels throughout the Redmond area on a regular basis.

12 7. Mr. Baker is limited in the major life activity of walking and uses a wheelchair
13 and modified van for transportation.

14 8. Mr. Baker requires paths of travel in compliance with the ADA Standards in order
15 to safely and comfortably patronize places of public accommodation, like the Redmond Saturday
16 Market.

17 9. Mr. Baker most recently patronized or attempted to patronize the Redmond
18 Saturday Market at Defendant's Property in July of 2018, and plans to return once accessibility
19 barriers are corrected.

20 10. Defendant G&I VII Redmond Retail LLC (“Defendant”) is a Delaware limited
21 liability company and leases the property at or near 7730 Leary Way in Redmond, Washington
22 (the “Property”) to the non-profit Redmond Saturday Market.

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Complaint for Declaratory and Injunctive Relief **WASHINGTON CIVIL & DISABILITY ADVOCATE**
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III. JURISDICTION AND VENUE

2 11. This court has jurisdiction pursuant to 28 U.S.C. § 1331, which gives district
3 courts original jurisdiction over civil actions arising under the Constitution, laws, or treaties of
4 the United States.

5 12. This court has jurisdiction pursuant to 28 U.S.C. § 1333(a)(4), which gives district
6 courts jurisdiction over actions to secure civil rights under Acts of Congress.

7 13. This court has jurisdiction pursuant to 28 U.S.C. § 1337, which gives district
8 courts supplemental jurisdiction over state law claims.

9 14. Venue is appropriate in this judicial district under 28 U.S.C. § 1391 because the
10 Property that is the subject of Plaintiff's Complaint for Injunctive Relief and Damages sits within
11 this district.

IV. FACTUAL ALLEGATIONS

13 15. The ADA was enacted in 1990, "[t]o establish a clear and comprehensive
14 prohibition of discrimination on the basis of disability," and prohibits places of public
15 accommodation from providing separate or unequal benefits and services to individuals with
16 disabilities.

16. Mr. Baker used his power wheelchair, albeit at personal risk to himself due to
existing accessibility barriers, to visit the Property to attend the Saturday market.

19 17. When Mr. Baker's power wheelchair is unusable, he cannot visit the market
20 because it is unsafe or impossible in a manual wheelchair due to the loose gravel and uneven
21 surface.

18. Defendant's Property does not comply with the ADA's accessibility laws and regulations under the 2010 ADA Standards for Accessible Design ("2010 Standards") or the

Complaint for Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE
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¹ 1991 ADA Standards for Accessible Design (“1991 Standards”).

2 19. Accessible routes must be provided between the site arrival points and the
3 elements within the sight. § 206.2 of the 2010 Standards; § 4.3.2 of the 1991 Standards.

4 20. Accessible routes must be “stable, firm, and slip resistant” and may have running
5 slope no steeper than 5% (1:20), and cross slope no steeper than 2.083% (1:48). §§ 402 and
6 302.1 of the 2010 Standards and §§ 4.5.1 and 4.3.7 of the 1991 Standards.

7 | 21. The walking surface at the Property is covered in gravel.

8 22. Saturday Market patrons must travel on the gravel surface from the entrances to
9 market stalls.

10 | 23. Gravel is not stable, firm, and slip resistant.

11 24. “[S]urfaces such as shag carpet, loose sand or gravel, wet clay, and irregular
12 surfaces such as cobblestones can significantly impede wheelchair movement.” § A4.5.1 of the
13 1991 standards.

14 25. Mr. Baker requires a stable, firm, and slip resistant travel surface to be able to
15 navigate the market without getting stuck.

16 26. Changes in level along the accessible route may not exceed 1/4 inches. §§ 403.4
17 and 303 of the 2010 Standards and § 4.5.2 of the 1991 standards.

18 27. The path of travel at the Property contains numerous changes in level exceeding
19 1/4 inch.

28. The accessible route at the Property does not meet the slope and change in level
29 requirements under the ADA due to numerous bumps, ridges, dips, holes, etc.

22 29. As of the filing of this complaint no alterations have been made to address
23 accessibility barriers at the Property.

1 30. Defendant's Property is not safe and is not welcoming for people who use
2 wheelchairs because it does not comply with the ADA's accessibility laws and regulations.

3 31. Defendant's failure to make the property comply with the ADA's accessibility
4 laws and regulations works to exclude people with disabilities from equal access and enjoyment
5 of the Redmond Saturday Market.

V. FIRST CAUSE OF ACTION
Title III of the Americans with Disabilities Act of 1990
42 U.S.C. § 12101 *et seq.*

8 32. Mr. Baker incorporates by reference the allegations in the paragraphs above.

9 33. Mr. Baker is limited in the major life activity of walking and is thus a qualified
10 individual with a disability within the meaning of Title III of the ADA.

11 34. Title III of the ADA states in relevant part: "No individual shall be discriminated
12 against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
13 privileges, advantages, or accommodations of any place of public accommodation by any person
14 who owns, leases (or leases to), or operates a place of public accommodation." 42 U.S.C. §
15 12182(a).

16 35. Defendant G&I VII Redmond Retail LLC owns the property where the Redmond
17 Saturday Market is located.

18 36. The Redmond Saturday Market location contains stalls selling food and drink and
19 other retail goods and is therefore a place of public accommodation. 42 U.S.C. § 12181(7).

37. Defendant has discriminated against Plaintiff on the basis of his disability.

38. Defendant's discriminatory conduct includes but is not limited to:

22 a. Discriminatory exclusion and/or denial of goods, services, facilities,
23 privileges, advantages, accommodations, and/or opportunities;

Complaint for Declaratory and Injunctive Relief WASHINGTON CIVIL & DISABILITY ADVOCATE
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- 1 b. Provision of goods, services, facilities, privileges, advantages, and/or
2 accommodations that are not equal to those afforded to non-disabled individuals;
- 3 c. Failing to make reasonable modifications in policies, practices, and/or
4 procedures as necessary to afford the goods, services, facilities, privileges, advantages,
5 and/or accommodations to individuals with disabilities;
- 6 d. Failing to make alterations in such a manner that, to the maximum extent
7 feasible, the altered portions are readily accessible to and usable by individuals with
8 disabilities, including individuals who use wheelchairs;
- 9 e. Failing to remove barriers to individuals with disabilities where it would
10 be readily achievable to do so.

11 39. Defendant discriminates and, in the absence of the injunction requested herein,
12 will continue in the future to discriminate against Plaintiff on the basis of disability in the full
13 and equal enjoyment of the goods, services, facilities, privileges, advantages, accommodations
14 and/or opportunities at Defendant's property in violation of Title III of the Americans with
15 Disabilities Act, 42 U.S.C. § 12181 et seq. and/or its implementing regulations.

16 40. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
17 and Injunctive Relief has harmed Mr. Baker, and the harm continues.

18 41. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
19 and Injunctive Relief entitles Mr. Baker to declaratory and injunctive relief. 42 U.S.C. § 12188.

20 42. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
21 and Injunctive Relief entitles Mr. Baker to recover reasonable attorneys' fees and costs incurred
22 in bringing this action. 42 U.S.C. § 12205.

VI. SECOND CAUSE OF ACTION
Violation of the Washington Law Against Discrimination
(R.C.W. §§ 49.60.010 et seq.)

43. Mr. Baker incorporates by reference the allegations in the paragraphs above.

44. Mr. Baker is a qualified individual with a disability within the meaning of the Washington Law Against Discrimination.

45. Section 49.60.030(1) of the Revised Code of Washington provides in pertinent part: "The right to be free from discrimination because of . . . the presence of any sensory, mental, or physical disability . . . is recognized as and declared to be a civil right. This right shall include, but not be limited to: . . . (b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement . . ."

12 46. Defendant has violated and continues to violate §§ 49.60.010 *et seq.* of the
13 Revised Code of Washington by violating multiple accessibility requirements under the ADA.

14 47. Defendant's actions constitute discrimination against persons with disabilities and
15 violate the Washington Law Against Discrimination, Revised Code of Washington § 49.60.010
16 et seq., in that persons with mobility disabilities have been and are still denied full and equal
17 enjoyment of the accommodations, advantages, facilities, privileges, and services that Defendant
18 provides to individuals who do not have disabilities.

19 48. As a direct and proximate result of Defendant's discriminatory conduct as alleged
20 in this Complaint for Declaratory and Injunctive Relief, Mr. Baker has suffered and continues to
21 suffer difficulty, hardship, isolation, and segregation due to Defendant's failure to remediate.

22 49. Defendant's discriminatory conduct as alleged in this Complaint for Declaratory
23 and Injunctive Relief has denied Mr. Baker the full and equal enjoyment of services that the

Washington Law Against Discrimination requires.

50. Mr. Baker has a clear legal right to access the Redmond Saturday Market on

Defendant's property under the Washington Law Against Discrimination.

51. Mr. Baker has the right for Defendant's property to comply with the ADA's

accessibility laws and regulations under the Washington Law Against Discrimination.

52. Defendant's property does not comply with ADA accessibility laws and

regulations.

53. Because Defendant's property does not comply with the ADA's accessibility laws

and regulations, declaratory and injunctive relief are appropriate remedies under the Washington

Law Against Discrimination. See e.g. *Kucera v. Dep't of Transp.*, 140 Wash. 2d 200, 209 (2000).

54. Pursuant to RCW § 49.60.030(2), Mr. Baker is entitled to declaratory and

injunctive relief and to recover from Defendant his reasonable attorneys' fees and costs incurred

in bringing this action.

VII. PRAYER FOR RELIEF

WHEREFORE, Mr. Baker respectfully requests that this Court:

1. Assume jurisdiction over this action;

2. Find and declare Defendant G&I VII Redmond Retail LLC to be in violation of

Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, et seq. and the Washington

Law Against Discrimination, Wash. Rev. Code §§ 49.60.010 et seq. because Defendant's

Property does not comply with the ADA's accessibility laws and regulations;

3. Issue a permanent injunction ordering Defendant to immediately implement the

necessary improvements to bring the Defendant's property into compliance with the ADA's

bility laws and regulations;

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Seattle, WA 9810

1 4. Award Mr. Baker reasonable attorneys' fees and costs as authorized by 42 U.S.C.

2 § 12205 and Wash. Rev. Code § 49.60.030(2);

3 5. Award actual, compensatory, and/or statutory damages to Mr. Baker for

4 violations of his civil rights as allowed under state and federal law;

5 6. Award such additional or alternative relief as may be just, proper, and equitable.

6 DATED THIS 30th day of July, 2019

7 By:

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